
HOUSE BILL No. 1738

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-1; IC 7.1-2-3-33; IC 7.1-3; IC 7.1-4-4.1; IC 35-46-1.

Synopsis: Various alcoholic beverage and tobacco matters. Limits the deposit of an alcoholic beverage dealer or retailer permit with the alcohol and tobacco commission to three years. Requires an alcoholic beverage retailer, dealer, or wholesaler to obtain the approval of the alcohol and tobacco commission of a floor plan of the permit premises. Increases the supplemental caterer's permit fees and employee permit fees. Establishes a fee of \$10 for a duplicate or reissued permit. Provides requirements for the location of the display of alcoholic beverages. Requires tobacco retailers to have permits to sell tobacco products. Authorizes the alcohol and tobacco commission to issue and enforce permits. Amends provisions concerning the sale and distribution of tobacco products. Repeals prohibition on certain tobacco billboard advertisements. Repeals a provision concerning advertising of tobacco products that is preempted by federal law.

Effective: July 1, 2003.

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January 21, 2003, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1738

A BILL FOR AN ACT to amend the Indiana Code concerning alcoholic beverages and tobacco.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 7.1-1-1-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. ~~General Purposes.~~
3 The **following are the** general purposes of this title: ~~are:~~

4 ~~(a)~~ **(1)** To protect the economic welfare, health, peace and morals
5 of the people of this state.

6 ~~(b)~~ **(2)** To regulate and limit the manufacture, sale, possession,
7 and use of alcohol and alcoholic beverages. ~~and;~~

8 ~~(c)~~ **(3)** To regulate the sale, possession, and distribution of
9 tobacco products.

10 **(4)** To provide for the raising of revenue.

11 SECTION 2. IC 7.1-1-2-2, AS AMENDED BY P.L.213-2001,
12 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2003]: Sec. 2. Except as provided in IC 7.1-5-1-3 and
14 IC 7.1-5-1-6, this title applies to the **following:**

15 **(1)** The commercial manufacturing, bottling, selling, bartering,
16 importing, transporting, delivering, furnishing, or possessing of
17 alcohol, alcoholic beverages, industrial alcohol, malt, malt syrup,



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malt extract, liquid malt or wort.

(2) The sale, possession, and distribution of tobacco products.

SECTION 3. IC 7.1-1-3-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 29. ~~Permit. The term~~ "Permit" means a written authorization issued by the commission entitling its holder to manufacture, rectify, distribute, transport, sell, or otherwise deal in alcoholic beverages **or tobacco products**, all as provided in this title.

SECTION 4. IC 7.1-1-3-47.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 47.5. "Tobacco product" has the meaning set forth in IC 7.1-6-1-3.**

SECTION 5. IC 7.1-2-3-33, AS ADDED BY P.L.177-1999, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 33. The commission is authorized to:

- (1) investigate a violation of; and
- (2) enforce a penalty for a violation of;

IC 35-46-1-10, IC 35-46-1-10.2, ~~IC 35-46-1-11.3~~, IC 35-46-1-11.5, or IC 35-46-1-11.7.

SECTION 6. IC 7.1-3-1-3.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3.5. A permittee to whom a retailer or dealer permit has been issued under this title, may deposit that permit with the commission for a period of one (1) year if the permittee is unable to immediately operate the business to which the permit applies. The commission may extend the term of the deposit for ~~an not more than two (2)~~ additional one (1) year ~~period periods~~ if the permittee is able to show to the satisfaction of the commission that the permittee is making a good faith effort to put the permit into operation.

SECTION 7. IC 7.1-3-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 1.5. Retailer, Dealer, and Wholesaler Floor Plans; Display of Alcoholic Beverages

Sec. 1. As used in this chapter, "permit" refers to a retailer, dealer, or wholesaler permit issued under this title.

Sec. 2. Before a new permit or transfer permit is issued, the commission shall approve the floor plan of the permit premises.

Sec. 3. (a) An applicant for a permit shall submit the following to the commission:

- (1) An application for the new permit or transfer permit.**
- (2) Four (4) copies of the proposed floor plan of the permit**



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premises.

(3) Any other information required by the commission.

(b) A floor plan must include the following:

(1) The dimensions of the permit premises.

(2) The location of any of the following in the permit premises:

(A) Entrances and exits.

(B) Doorways.

(C) Windows.

(D) Closets.

(E) Storage areas.

(F) Bars.

(G) Office space.

(H) Restaurant area.

(I) Kitchen.

(J) Dance floor.

(K) Restrooms.

(L) Any area or room accessible from the licensed premises, even if the area is not commonly used as a part of the day to day business operation.

(M) The location of all alcoholic beverages displayed.

Sec. 4. (a) Before making any changes to the permit premises that would be inconsistent with the existing floor plan, the permit holder shall:

(1) submit the proposed change to the existing floor plan to the commission; and

(2) receive commission approval of the proposed change to the existing floor plan.

(b) A permit holder shall submit the following to the commission:

(1) A written request for the commission to consider the proposed changes to the existing floor plan of the permit premises.

(2) Four (4) copies of the proposed floor plan.

(3) Any other information required by the commission.

Sec. 5. Except as provided in sections 6 and 7 of this chapter, the display of alcoholic beverages must be located within or contiguous to the area of the premises where other products are displayed that qualify the applicant or permit holder for the permit applied for by the applicant or held by the permit holder.

Sec. 6. (a) This section applies to an applicant or a permit holder who, because of the variety of products sold by the permit holder

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or applicant, qualifies for at least two (2):

- (1) retailer permits;
- (2) dealer permits; or
- (3) wholesaler permits;

under this title.

(b) Except as provided in section 7 of this chapter, an applicant or a permit holder shall display alcoholic beverages within or contiguous to the area of the premises where other products are displayed that qualify the applicant or permit holder for:

- (1) the permit applied for by the applicant or held by the permit holder; or
- (2) a permit other than the permit applied for by the applicant or held by the permit holder.

Sec. 7. (a) A permit holder may temporarily display not more than twenty-five percent (25%) of each product that qualifies the permit holder for:

- (1) the permit held by the permit holder; or
- (2) in the case of a permit holder described in section 6 of this chapter, a permit other than the permit held by the permit holder;

in a location that does not meet the requirements of section 5 or 6 of this chapter but is in compliance with the rules of the commission.

(b) A permit holder may temporarily relocate and display a product under this section only for the purposes of a sale or promotion of the product of a limited duration as determined by the commission.

Sec. 8. The commission may revoke the permit of a permit holder who violates this chapter.

SECTION 8. IC 7.1-3-18.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 18.5. Tobacco Sales Permit

Sec. 1. (a) A person may not sell or distribute a tobacco product at retail without a valid tobacco sales permit issued by the commission.

(b) A tobacco sales permit may only be issued to a person who owns or operates at least one (1) of the following:

- (1) The premises where the tobacco product is sold or distributed.
- (2) A cigarette vending machine (as defined by IC 35-43-4-7).

Sec. 2. (a) A person who desires a tobacco sales permit must

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provide the following to the commission:

(1) The applicant's name and mailing address, and the address of the premises for which the permit is being issued.

(2) A fee of one hundred dollars (\$100).

(b) A separate permit is required for each location where the tobacco products are sold or distributed.

Sec. 3. (a) A tobacco sales permit issued by the commission under this chapter must contain the following information:

(1) The permit number.

(2) The permit holder's address.

(3) The location of the business or vending machine for which the permit is issued.

(4) The expiration date of the permit.

(b) A tobacco sales permit is:

(1) valid for one (1) year after the date of issuance, unless the commission revokes the permit; and

(2) nontransferable.

Sec. 4. The commission shall adopt rules under IC 4-22-2 to establish procedures for the issuance, renewal, and reinstatement of a tobacco sales permit.

Sec. 5. (a) Subject to subsection (b), the commission may suspend or revoke the permit of a person who violates this title, IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11.5, or IC 35-46-1-11.7.

(b) Before suspending or revoking a permit under this chapter, the commission shall provide the written notice of the alleged violation to the permit holder and conduct a hearing. The commission shall provide written notice of the suspension or revocation to the permit holder.

Sec. 6. If a tobacco sales permit has been revoked under section 5 of this chapter, the commission may not reissue a permit for that business location or permit holder for one (1) year.

Sec. 7. (a) If a tobacco sales permit is renewed before the permit expires, the fee for the renewal of a tobacco sales permit is one hundred dollars (\$100).

(b) If a tobacco sales permit has:

(1) expired;

(2) been suspended;

(3) or been revoked;

the fee for the reinstatement of the permit is two hundred dollars (\$200).

Sec. 8. A person who is required to have a tobacco sales permit under this chapter and who sells or distributes tobacco products

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without a valid tobacco sales permit commits a Class B misdemeanor. Each violation of this section constitutes a separate offense.

SECTION 9. IC 7.1-4-4.1-2, AS ADDED BY P.L.204-2001, SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. The fee for a supplemental caterer's permit is ~~five~~ **fifty** dollars (~~\$5~~) (**\$50**) per ~~event~~ **day**.

SECTION 10. IC 7.1-4-4.1-3, AS ADDED BY P.L.204-2001, SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. The following biennial license fee is imposed for an employee's permit:

(1) Five dollars (\$5) if the permit is used only to perform volunteer service that benefits a nonprofit organization.

(2) ~~Twenty~~ **Thirty** dollars (~~\$20~~) (**\$30**) if subdivision (1) does not apply.

The term of a biennial employee's license is two (2) years.

SECTION 11. IC 7.1-4-4.1-18 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 18. The fee for a duplicate or reissued permit of any type is ten dollars (\$10).**

SECTION 12. IC 35-46-1-10, AS AMENDED BY P.L.204-2001, SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) A person who knowingly:

(1) sells or distributes tobacco to a person less than eighteen (18) years of age; or

(2) purchases tobacco for delivery to another person who is less than eighteen (18) years of age;

commits a Class C infraction. ~~For a sale to take place under this section, the buyer must pay the seller for the tobacco product:~~

~~(b) It is not a defense that the person to whom the tobacco was sold or distributed did not smoke, chew, or otherwise consume the tobacco:~~

~~(c) The following defenses are available to a person accused of selling or distributing tobacco to a person who is less than eighteen (18) years of age:~~

~~(1) The buyer or recipient produced a driver's license bearing the purchaser's or recipient's photograph, showing that the purchaser or recipient was of legal age to make the purchase:~~

~~(2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1, or a similar card issued under the laws of another state or the federal government, showing that the purchaser or recipient was of legal age to make the purchase:~~

~~(3) The appearance of the purchaser or recipient was such that an~~

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ordinary prudent person would believe that the purchaser or recipient was not less than the age that complies with regulations promulgated by the federal Food and Drug Administration.

(d) It is a defense that the accused person sold or delivered the tobacco to a person who acted in the ordinary course of employment or a business concerning tobacco:

- (1) agriculture;
- (2) processing;
- (3) transporting;
- (4) wholesaling; or
- (5) retailing.

(e) (b) As used in this section, "distribute" means to give tobacco to another person as a means of promoting, advertising, or marketing the tobacco to the general public.

(f) Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a person who sells or distributes tobacco is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco is issued a citation or summons under section 10-5 of this chapter.

(g) (c) Notwithstanding IC 34-28-5-4(c), civil penalties collected under this section must be deposited in the youth tobacco education and enforcement fund (IC 7.1-6-2-6).

SECTION 13. IC 35-46-1-10.2, AS AMENDED BY P.L.1-2001, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10.2. (a) A retail establishment that sells or distributes tobacco to a person less than eighteen (18) years of age commits a Class C infraction. For a sale to take place under this section, the buyer must pay the retail establishment for the tobacco product. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

- (1) If the retail establishment at that specific business location has not been issued a citation or summons for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars (\$50);
- (2) If the retail establishment at that specific business location has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of one hundred dollars (\$100);
- (3) If the retail establishment at that specific business location has had two (2) citations or summonses issued for a violation of this section in the previous ninety (90) days, a civil penalty of two

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hundred fifty dollars (\$250):

(4) If the retail establishment at that specific business location has had three (3) or more citations or summonses issued for a violation of this section in the previous ninety (90) days, a civil penalty of five hundred dollars (\$500):

A retail establishment may not be issued a citation or summons for a violation of this section more than once every twenty-four (24) hours for each specific business location:

(b) It is not a defense that the person to whom the tobacco was sold or distributed did not smoke, chew, or otherwise consume the tobacco:

(c) The following defenses are available to a retail establishment accused of selling or distributing tobacco to a person who is less than eighteen (18) years of age:

(1) The buyer or recipient produced a driver's license bearing the purchaser's or recipient's photograph showing that the purchaser or recipient was of legal age to make the purchase:

(2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1 or a similar card issued under the laws of another state or the federal government showing that the purchaser or recipient was of legal age to make the purchase:

(3) The appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the age that complies with regulations promulgated by the federal Food and Drug Administration:

(d) It is a defense that the accused retail establishment sold or delivered the tobacco to a person who acted in the ordinary course of employment or a business concerning tobacco:

(1) agriculture;

(2) processing;

(3) transporting;

(4) wholesaling; or

(5) retailing:

(e) (b) As used in this section, "distribute" means to give tobacco to another person as a means of promoting, advertising, or marketing the tobacco to the general public.

(f) Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a retail establishment that sells or distributes tobacco is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco is issued a citation or summons under section 10-5 of this chapter:

(g) (c) Notwithstanding IC 34-28-5-5(c), civil penalties collected

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under this section must be deposited in the youth tobacco education and enforcement fund (IC 7.1-6-2-6).

SECTION 14. IC 35-46-1-11.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11.2. ~~(a) This section does not apply to a tobacco business:~~

- ~~(1) operating as a tobacco business before April 1, 1996; or~~
- ~~(2) that begins operating as a tobacco business after April 1, 1996; if at the time the tobacco business begins operation the tobacco business is not located in an area prohibited under this section.~~

~~(b) (a)~~ A person may not operate a tobacco business within two hundred (200) feet of a public or private elementary or secondary school, as measured between the nearest point of the premises occupied by the tobacco business and the nearest point of a building used by the school for instructional purposes.

~~(c) (b)~~ A person who violates this section commits a Class C misdemeanor.

SECTION 15. IC 35-46-1-11.5, AS AMENDED BY P.L.1-2001, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11.5. (a) Except for a coin machine that is placed in or directly adjacent to an entranceway or an exit, or placed in a hallway, a restroom, or another common area that is accessible to persons who are less than eighteen (18) years of age, this section does not apply to a coin machine that is located in the following:

- (1) That part of a licensed premises (as defined in IC 7.1-1-3-20) where entry is limited to persons who are at least eighteen (18) years of age.
- (2) Private industrial or office locations that are customarily accessible only to persons who are at least eighteen (18) years of age.
- (3) Private clubs if the membership is limited to persons who are at least eighteen (18) years of age.
- (4) Riverboats where entry is limited to persons who are at least twenty-one (21) years of age and on which lawful gambling is authorized.

(b) As used in this section, "coin machine" has the meaning set forth in IC 35-43-5-1.

(c) Except as provided in subsection (a), an owner of a retail establishment may not:

- (1) distribute or sell tobacco by use of a coin machine; or
- (2) install or maintain a coin machine that is intended to be used for the sale or distribution of tobacco.

(d) An owner of a retail establishment who violates this section

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commits a Class C infraction. A citation or summons issued under this section must provide notice that the coin machine must be moved within two (2) business days. ~~Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:~~

(1) If the owner of the retail establishment has not been issued a citation or summons for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars (\$50):

(2) If the owner of the retail establishment has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of two hundred fifty dollars (\$250):

(3) If the owner of the retail establishment has had two (2) citations or summonses issued for a violation of this section in the previous ninety (90) days for the same machine, the coin machine shall be removed or impounded by a law enforcement officer having jurisdiction where the violation occurs:

An owner of a retail establishment may not be issued a citation or summons for a violation of this section more than once every two (2) business days for each business location:

(e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the youth tobacco education and enforcement fund established under IC 7.1-6-2-6.

SECTION 16. IC 35-46-1-11.7, AS AMENDED BY P.L.1-2001, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11.7. (a) A retail establishment that has as its primary purpose the sale of tobacco products may not allow an individual who is less than eighteen (18) years of age to enter the retail establishment.

(b) An individual who is less than eighteen (18) years of age may not enter a retail establishment described in subsection (a).

(c) A retail establishment described in subsection (a) must conspicuously post on all entrances to the retail establishment a sign in boldface type that states "NOTICE: It is unlawful for a person less than 18 years old to enter this store."

(d) A person who violates this section commits a Class C infraction. ~~Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:~~

(1) If the person has not been cited for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars (\$50):

(2) If the person has had one (1) violation in the previous ninety

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1 ~~(90) days, a civil penalty of one hundred dollars (\$100).~~

2 ~~(3) If the person has had two (2) violations in the previous ninety~~
3 ~~(90) days, a civil penalty of two hundred fifty dollars (\$250).~~

4 ~~(4) If the person has had three (3) or more violations in the~~
5 ~~previous ninety (90) days, a civil penalty of five hundred dollars~~
6 ~~(\$500).~~

7 ~~A person may not be cited more than once every twenty-four (24)~~
8 ~~hours.~~

9 (e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under
10 this section must be deposited in the youth tobacco education and
11 enforcement fund established under IC 7.1-6-2-6.

12 SECTION 17. IC 35-46-1-11.3 IS REPEALED [EFFECTIVE JULY
13 1, 2003].

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